

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 19-10421-RGS

MICHAEL BOTELHO

v.

CAPTAIN HOLMES, et al.

ORDER

March 29, 2019

STEARNS, D.J.

Michael Botelho, a pre-trial detainee being held at the Barnstable County House of Correction (“BCHOC”), has filed a civil rights complaint, a motion for leave to proceed *in forma pauperis*, and a motion for an injunction. The complaint concerns an alleged attack on Botelho by a sentenced inmate at the Plymouth County Correctional Facility (“PCCF”). According to Botelho, jail guards knew the sentenced inmate was violent. Notwithstanding, on one particular occasion they allowed his cell door to remain open. The alleged perpetrator exited his cell and threw a “bomb” consisting of human excrement at Botelho.

Botelho claims that, as a result of this attack, he required medical attention and was emotionally traumatized. He also maintains that he was

wrongfully denied the opportunity to file a criminal complaint. Botelho further alleges that PCCF officials will not refer attacks with human waste “bombs” to prosecutors because any subsequent investigation would reveal the malfeasance of the defendants, including their lax discipline against inmates who commit the assaults and their failure to prevent the attacks. Botelho claims that, in retaliation for filing and subsequently appealing a grievance concerning the attack, he was transferred to BCHOC. According to Botelho, BCHOC has a more restrictive environment than does PCCF. Botelho brings this action against four officials at PCCF in their individual and official capacities.

Botelho has also filed a motion for an injunction requiring PCCF officials to inform all inmates that anyone who throws a human waste “bomb” at another inmate or at a correctional officer will be prosecuted.

Upon review of the complaint and the motions, the court hereby orders:

1. The motion for leave to proceed *in forma pauperis* is GRANTED. Pursuant to 28 U.S.C. § 1915(b)(1), the court assesses an initial partial filing fee of \$20.96. The remainder of the fee, \$329.04, shall be collected pursuant to 28 U.S.C. § 1915(b)(2). The clerk shall send a copy of this order to the treasurer of the institution having custody of Botelho.

2. The motion for an injunction is DENIED WITHOUT PREJUDICE. Botelho asks this court to issue an order against correctional officers at PCCF to address the alleged frequency with which inmates at PCCF throw human waste “bombs.” However, Botelho was transferred from PCCF and he does not express any anticipation that he will be returned to that facility. Because the requested relief no longer affects him, Botelho does not have standing to bring the motion.

3. The clerk shall issue summonses as to all defendants. Botelho is responsible for serving the summonses, complaint, and this order on the defendants in compliance with Rule 4 of the Federal Rules of Civil Procedure and Local Rule 4.1.

4. Botelho must complete the aforesaid service ***no later than Thursday, June 27, 2019***. Failure to complete service in a timely fashion may result in dismissal of this action without further notice from the court. See Fed. R. Civ. P. 4(m); Local Rule 4.1.

5. Because Botelho is proceeding *in forma pauperis*, he may elect to have service completed by the United States Marshals Service (“USMS”). If the Botelho chooses to have service completed by the USMS, he shall provide the agency with all papers for service on each defendant. Botelho must also provide the USMS with a completed USM-285 form for each

defendant. The USMS shall complete service as directed by the plaintiff with all costs of service to be advanced by the United States. The Clerk shall provide Botelho with forms and instructions for service.

SO ORDERED.

/s/ Richard G. Stearns
UNITED STATES DISTRICT JUDGE